JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3660

Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Ronald M. Sabraw, Chair
Hon. Elaine M. Watters, Chair of the Uniform Rules Subcommittee
Patrick O'Donnell, Committee Counsel

DATE: April 17, 2000

SUBJECT: Uniform Statewide Rules in Preempted Fields (amend Cal. Rules of Court, rules 201, 313, 324, 325, 376, 379, 391, 501, and 981.1; adopt rule 388) (Action Required)

I. Introduction

When rule 981.1 of the California Rules of Court becomes effective July 1, 2000, the Judicial Council will preempt all local court rules in civil cases in the fields of pleadings, demurrers, ex parte applications, motions, discovery, provisional remedies, and the form and format of papers. The Civil and Small Claims Advisory Committee recommends that the council, effective July 1, 2000, amend eight rules and adopt one new rule as part of the uniform rules that will occupy the fields preempted by rule 981.1.

The committee further recommends that rule 981.1 itself be amended to clarify its scope and to create a temporary exemption for local rules relating to class actions, eminent domain proceedings, and receivership proceedings. This exemption would last only until January 1, 2002, by which time the committee intends to develop uniform statewide rules in these areas and submit them to the council for adoption.

II. Background

The Judicial Council on April 29, 1999 adopted rule 981.1 of the California Rules of Court. However, the council postponed the effective date of the rule until July 1, 2000. This postponement was intended to provide the courts and the public with an opportunity to submit proposals for local rules to be considered for adoption as statewide rules. To implement the proposal process, rule 981.1(c) provides: "Any proposals for local rules to be considered for adoption as statewide

rules, effective July 1, 2000, should be submitted to the Judicial Council no later than September 1, 1999."

During the summer and fall of 1999, the council received a total of fourteen rule proposals. These proposals were submitted by presiding judges, individual judges, court rules committees, court administrators, attorneys, and the California Receivers Forum.[1] Most submissions consisted of a proposed rule or set of rules, based on a court's existing local rules. In a few instances, courts proposed that all of their local law and motion rules be adopted as statewide rules.

The proposals were preliminarily reviewed by the Civil and Small Claims Advisory Committee's Uniform Rules Subcommittee. This subcommittee worked together with members of the California Judges Association and the State Bar of California. The joint working groups met four times between August and November 1999. They carefully reviewed all the proposals submitted to the council in August–September 1999. They also reviewed various proposals that had been submitted earlier.

On November 19, 1999, the Civil and Small Claims Advisory Committee reviewed the proposals and the joint working groups' comments and recommendations. The committee concluded that some of the proposed local rules would be appropriate for adoption as statewide rules, while other proposed rules would not be. The committee also found that some of the proposed local rules were already covered by current rules of court. Finally, the committee concluded that some of the proposed rules were not related to the fields that would be preempted under rule 981.1.[2]

Based on its review of the proposals, the committee determined that most of the proposals for local rules that appeared to be appropriate for adoption as statewide rules should be treated as amendments to existing rules of court. In the end, the committee recommended that eight amended rules and one new rule be circulated for comment.

On December 14, 1999, the Rules and Projects Committee approved the circulation of the committee's rule proposals. The proposals were circulated between December 23, 1999, and February 22, 2000. A total of 24 comments on the rules were received from courts, judges, a commissioner, private attorneys, and others.

---

[1] A list of all the courts and others who submitted rule proposals in August–September 1999 is attached at page 45.

[2] The discussions and actions of the Civil and Small Claims Advisory Committee regarding the rule proposals are set forth in the summary minutes of the committee's November 19, 1999 meeting.

A chart summarizing the comments and the committee's responses is attached at pages 23–44.

On March 20, 2000, the Civil and Small Claims Advisory Committee reviewed all of the comments and made changes to several of the proposed rules.

III. Discussion

A. Rules Relating to the Form and Format of Papers

Based on suggestions from the courts and others, the committee recommends that rules 201, 313, and 501, relating to the form and format of papers, be amended.

1. *Amended Rules 201 and 501 (Form of Papers Presented for Filing)*

The proposed amendments to rules 201(f) and 501(f) would provide that, at the *option* of the person filing the papers, the first page of the papers would include a fax number and an e-mail address. The amended rules would provide that inclusion of this information shall not be considered consent to service by fax or e-mail unless otherwise provided by law. The committee also proposes amending rules 201(g) and 501(g) to require that the title of the paper in the footer be in at least 10-point type. This would ensure the readability of footers.

Ten comments were received on the proposals to amend rules 201 and 501. All of the commentators supported the amendments but with modifications. The most frequent comment was that the original proposal to require footers to be "in at least 12-point type" was too burdensome. The committee agreed and changed the language to read "in at least 10-point type." The committee disagreed with a commentator who suggested that the rules require all footers to be centered because it did not think such a requirement is necessary.[3]

2. *Amended Rule 313 (Memorandum of Points and Authorities)*

The committee proposes adding a new subdivision (e) to rule 313 to indicate the proper manner of paginating a memorandum. This amendment is intended to eliminate the uncertainty about such pagination under the current rules of court.

There were no specific comments on this proposal.

[3] The committee also disagreed with a proposal submitted in connection with rules 201 and 501—although more properly addressed in the 300 rules series relating to law and motion—that parties be required to submit "courtesy copies" of all motion papers. The committee thought that, although some courts may benefit from a local courtesy copy rule, most courts do not find such a rule necessary. Hence, it would not be appropriate to adopt such a rule as a statewide rule. Furthermore, permitting an exception for individual courts, departments, or judicial officers would result in a lack of uniformity.

B. Rules Relating to Law and Motion

Based on suggestions from courts and others, the committee recommends amending several rules that relate to law and motion practice.

1. *Amended Rule 324 (Tentative Ruling Procedure)*

Rule 324 would be amended to provide that: (1) the court would have the option of making tentative rulings available not only by telephone, but also by other methods; (2) the party requesting oral argument would be required to notify the *court* as well as the other party of the party's intention to appear; (3) the time by which the court must notify the parties of tentative rulings would be changed from 3:30 p.m. to 3:00 p.m.; (4) the time by which the party intending to appear must give notice to the other party would be changed from 4:30 p.m. to 4:00 p.m.; (5) a party intending to appear would be required to notify the other party by telephone or in person; and (6) the court would be required to accept notice by telephone and, at its discretion, would also be allowed to designate alternative methods by which a party might notify the court of the party's intention to appear.

Two persons submitted comments on the amendments to rule 324. One commentator suggested that rule 324 be clarified to state that, whenever the rule mentions "day," it means "court day." The committee agreed with this comment, and modified the rule.

The second commentator submitted several comments. First, this commentator proposed that the time limit for courts to issue tentative rulings and for notice to be given to other parties be made later than under the current rule rather than earlier. The committee disagreed. It believed that the rule's proposed new, earlier time limits are reasonable, especially in light of the recent amendment of section 1005 of the Code of Civil Procedure, which requires that all motion papers be filed at least five rather than two days before the hearing. The slightly earlier time in amended rule 324 would not be too burdensome for most courts and would benefit litigants. By comparison, the commentator's proposal would result in notice being given too late to the courts and after business hours for attorneys.

The second commentator also proposed that rule 324 be modified to allow alternative methods of communication besides telephonic communication. The committee disagreed in part, and agreed in part, with this comment. Regarding the party's notice to other parties of intent to appear, the committee remained convinced that notice by telephone is more reliable and more widely available than notice by fax or e-mail. Thus, the rule would generally provide for notice by telephone. However, to clarify that direct personal communication is also a proper method of notice, the committee added "or in person" at the end of the new fourth sentence in (a). Regarding notice by the courts, the committee noted that the

proposed amendments to rule 324 would allow courts, at their option, to provide notice of tentative rulings by alternative methods in addition to the telephone.

Finally, the committee agreed with the comment that rule 324 should specify that the tentative ruling will become the ruling of the court unless notice of intent to appear is given. Absent such a provision, prevailing parties might feel compelled to appear out of concern that the court might modify its tentative ruling at the time of the hearing. Thus, in response to the comments, the committee added a new sentence at the end of rule 324(a)(1): "The tentative ruling shall become the ruling of the court unless notice of intent to appear is given."

On April 11, 2000, the Rules and Projects Committee reviewed the proposed amendments to rule 324. It recommended that the committee further revise the rule to clarify its scope. The committee felt that the rule should set forth clearly which tentative ruling procedures the trial courts are authorized to adopt. Procedures that are not authorized or permitted by rule 324 would be preempted under rule 981.1. The Chair and members of the advisory committee revised rule 324, and recommend that the council adopt the revised version attached to this report.

2. *Amended Rule 325 (Demurrers)*
The Los Angeles Superior Court proposed that the council adopt its local rule intended to prevent excessive notice for demurrers. The local rule is designed to prevent the practice by attorneys of setting hearing dates for demurrers far into the future, which delays the progress of the case. The committee agreed that this practice is undesirable. It recommends amending rule 325(b) of the California Rules of Court to require that demurrers be set for a hearing date not more than 35 days following the filing of the demurrer or on the first date available to the court thereafter.

Two persons commented on amended rule 325. One commentator suggested changing the amending language to state: "Demurrers shall be set for hearing on a date no later than 35 days following the filing of the demurrer or on the first date available to the court thereafter." The committee agreed that this language was clearer and more precise than the version that had been circulated, and modified the rule. Another commentator suggested that the demurring party should be required to state in the caption or notice that the demurrer was set for hearing beyond 35 days because of the court's calendar. The committee regarded such a requirement as unnecessary. Whenever the reasons for the scheduling of the demurrer become an issue, parties should be able to communicate simply and directly with each other regarding the reasons.

3. *Amended Rule 376 (Motion to Be Relieved as Counsel)*
The Los Angeles Superior Court proposed amending rule 376, which governs motions to be relieved as counsel. The committee agreed with the proposal. It recommends that rule 376 be amended to require that an attorney seeking to be relieved as counsel provide (1) improved notice to the client, and (2) a more detailed declaration to the court relating to service of the motion papers upon the client. The declaration should indicate that the client's address is current or that the service address is the last known address, and that the attorney has not been able to obtain a more current address after making reasonable efforts to do so within 30 days prior to the filing of the motion to be relieved as counsel. To accomplish these purposes, the rule would require that attorneys seeking to be relieved as counsel use three new mandatory forms specifically designed for such motions.[4]

Five commentators remarked on amended rule 376. A research attorney was "very enthusiastic about the changes to this rule." A couple of commentators opposed a new requirement in rule 376 that, if no hearing date is presently set in the case, the court must set a hearing date at the time the motion is heard. The committee disagreed with this comment. It regarded this scheduling requirement as a useful means of promoting good case management.

One commentator thought the reference to "new" attorney in the rule[5] should be changed to "replacement" or "another" attorney. The committee did not think the language was confusing, and so did not change the reference to "new" attorney.

The committee agreed with some of the other comments. It added the word "proposed" before "order" in subdivision (e). It added a reference to "other parties" in the notices. Most importantly, the committee agreed that, if the council adopts the proposed new forms implementing rule 376 and Code of Civil Procedure section 284, much of the rule's detailed language relating to the notices to be given to the client and the service required could be eliminated. Hence, the committee revised rule 376 to require the use of the new mandatory forms and substantially simplified its text.

[4] Proposed new forms for motions to be relieved as counsel (Forms MC-051, MC-052, and MC-053) were sent out for public comment at the same time as amended rule 376. Comments were received on the forms and, based on the comments, the committee has revised the forms. A discussion of the proposed new forms is contained in a separate report, which is being submitted to the Judicial Council at the same time as these proposals.

[5] The reference to "new" attorney was removed from the rule when it was simplified after the comments, but still appears in the warning notices on the forms.

4. *Amended Rule 379 (Ex Parte Applications and Orders)*
The Los Angeles Superior Court recommended that rule 379 be amended to require that the declaration submitted by the party seeking the ex parte order include a statement that notice was given to the other party of "the relief sought." The committee agreed with this proposal. With this provision added, the rule will ensure that judges ruling on ex parte applications will know what information the applicant provided to the other party about the relief sought.

Four comments were received on amended rule 379. The Rules Committee of the San Mateo County Superior Court supported the amendment without making any specific comments. The Presiding Judge of the San Francisco Superior Court supported the amendments, but noted that a proposed new subdivision on applicability included in the version of rule 379 circulated for comment is unnecessary because rule 301 already covers this matter. The committee agreed and deleted the subdivision.

Finally, two courts proposed that rule 379 should require a party seeking an ex parte application to file papers by 12:00 noon the day before the hearing. The committee disagreed. Requiring papers to be filed the day before the hearing would be unduly burdensome on litigants and inconsistent with the purposes of ex parte hearings, which include providing prompt or immediate relief, if appropriate.

5. *New Rule 388 (Default Judgments)*
The Los Angeles Superior Court proposed that the council adopt its local rule on default judgments as a statewide rule. The committee agreed with this proposal. The new rule on default judgments would list the documents that must be submitted in order to obtain a default judgment on declarations. The rule would also authorize courts to establish a fee schedule by local rule to be used by the court in determining the reasonable amount of attorney's fees allowed in the case of a default judgment. The committee concluded that local rules relating to fee schedules are appropriate because the reasonable local fees vary throughout the state, and no statewide schedule is feasible.

Five comments were received on proposed new rule 388. Two commentators recommended that proposed rule 388 be revised to state that the *Request for Entry of Default* (Form 982(a)(6)) includes several of the items required to be filed by the rule. The committee disagreed because the proposed rule already expressly states that a party seeking a default judgment must use Form 982(a)(6) and is otherwise sufficiently clear. In response to another comment, the committee concluded that it was not necessary to include a statement of damages on the list of required documents because this requirement applies only to personal injury or wrongful death actions and is covered by statute. (See Code of Civ. Proc., §

425.11(c).) In response to a third commentator, the committee concluded that it is unnecessary for the rule to specify the "types" of judgments that the declaration would support or to state that a "separate" proposed judgment form must be filed with the clerk.

Finally, a commentator objected to the rule on the grounds that it would permit each court to set forth a schedule of attorneys' fees in default judgment cases. The commentator was particularly concerned that local fee schedules would remove discretion in awarding attorneys' fees from the courts. The committee disagreed. Fee schedules are authorized by statute and often are useful to the courts. Furthermore, such schedules are for guidance. They would not prevent courts, under rule 388 and applicable statutes, from exercising their discretion to determine the "reasonable" amounts of fees that may be awarded in particular cases.

6. *Amended Rule 391 (Preparation of Order)*

The committee proposes that three changes be made to rule 391, which concerns the preparation of orders after a hearing. First, the term "approval as to form" would be changed to "approval as conforming to the court's order." This new wording would more accurately indicate what the approval of the order actually involves. Second, the prevailing party would be required to submit to the court, along with a proposed order, a summary of any responses of the other parties "or a statement that no responses have been received." Third, a new subdivision would provide that the rule does not apply if the motion was unopposed and a proposed order was submitted with the moving papers.[6]

Five comments were received on amended rule 391. The original proposed version of amended rule 391(d) had stated: "This rule shall not apply if the motion is unopposed and *only the prevailing party appeared at the hearing*, unless otherwise ordered by the court." A commentator suggested that rule 391(d) be changed to read: "This rule shall not apply if the motion was unopposed and *a proposed order was submitted with the moving papers*, unless otherwise ordered by the court." The committee agreed that the newly proposed language would implement the purposes of rule 391 better than would the original language. Under the modified rule, if a motion were unopposed and the proposed order that had been submitted satisfied the court, the court would be able to sign the order immediately. The prevailing party would not need to appear personally to obtain a signed order.

[6] In reviewing amended rule 391, the Rules and Projects Committee also added to subdivision (b) a clarifying phrase to the effect that the order shall be transmitted promptly *after the expiration of the five-day period provided for approval.*

Another commentator suggested changing the current requirement in rule 391 that the prevailing party be notified as to whether or not the proposed order is approved within five days after mailing or delivery. The commentator asserted that the time provided for a response is too short. The committee disagreed. The five-day provision has been in the rule for years and has not caused any significant difficulties. Furthermore, the provision encourages prompt submission of orders to the courts.

A third commentator proposed that rule 391(b) be modified to explicitly provide that copies of all letters and enclosures sent to the court must also be sent to the other party. The committee did not regard such a provision as necessary. Of the two additional comments, one simply suggested some stylistic changes, which the committee did not regard as necessary. The other commentator stated: "This rule is a good idea because lawyers have given orders to judges without the opponents' approval."

C. Rule Preempting Local Rules

The Judicial Council adopted rule 981.1 to promote uniformity of civil practice throughout California. When it becomes effective, rule 981.1 will preempt all local rules relating to pleadings, demurrers, ex parte applications, motions, discovery, provisional remedies, and the form and format of papers.

1. *Amended Rule 981.1 (Preemption of Local Rules)*

When this rule of court becomes effective on July 1, 2000, it will be the cornerstone of the council's policy to promote uniform statewide practices in civil proceedings in the trial courts. Rule 981.1, as the foundation for statewide uniform rules, should be clear and unambiguous. In this regard, the Civil and Small Claims Advisory Committee has carefully considered the proposals to amend rule 981.1. After extensive discussions, the committee has concluded that a few amendments to the rule would be appropriate to ensure that the rule is clear.

First, based on the courts' submissions, there appears to be some uncertainty whether rule 981's preemption of local rules applies to courts' local case management rules. Because rule 981.1(a) provides that the rule does not invalidate local rules "otherwise permitted or required by statute," rule 981.1 by its terms does not apply to local rules adopted in accordance with the Trial Court Delay Reduction Act. Nonetheless, to clarify this matter, the committee recommends adding an explicit statement in rule 981.1(b) that the rule does not apply to "local court rules adopted under the Trial Court Delay Reduction Act."

Second, the council's intent is for rule 981.1 to apply only to civil proceedings. The Los Angeles Superior Court's Rules Committee proposed amending the rule to clarify this issue. The committee agreed that the rule should be clarified by

amending subdivision (b) to state that the rule is inapplicable not just to proceedings "under the Penal Code" but to proceedings under the Penal Code "and all other criminal proceedings."

Third, by the time rule 981.1 becomes effective, the last sentence (on the time to submit proposals for local rules for adoption as statewide rules) will be obsolete. Hence, it should be deleted, effective July 1, 2000.

In addition to the proposed amendments that would clarify rule 981.1, the committee considered various proposals for exemptions from the rule. Specifically, the superior courts of San Francisco and Los Angeles Counties have proposed exempting certain local rules relating to class actions from the effects of rule 981.1. The Los Angeles Superior Court has also requested exemptions for its local rules on eminent domain proceedings and its rules and forms for receivership proceedings.

Although the committee is generally opposed to the creation of exemptions, it agrees that a *temporary* exemption for local rules relating to these particular types of cases is warranted because no rules of court relating to such cases currently exist. At the same time, the committee believes that the Judicial Council should develop and adopt uniform statewide rules of court in these areas during the next two years. Hence, the committee recommends that the council amend rule 981.1 to allow an exemption for local class action, eminent domain, and receivership rules until January 1, 2002. By that time, the Civil and Small Claims Advisory Committee will have developed appropriate statewide rules in these specialized areas and will have presented them to the council for adoption.

2. *Comments on Rule 981.1*
Six commentators submitted comments on rule 981.1 and the committee's proposed amendments to the rule.

First, the San Francisco Superior Court requested that the council create an exception to rule 981.1 that would authorize courts by local rule to require parties to provide "courtesy copies" of motion papers. The committee did not agree with this proposal. Although some courts may benefit from a local "courtesy copy" rule, most courts do not find such a rule necessary; hence, it would not be appropriate to adopt such a rule as a statewide rule. Furthermore, permitting an exception for individual courts, departments, or judicial officers would result in a lack of uniformity. Therefore, the committee opposed recognizing any exception to rule 981.1 that would allow for local "courtesy copy" rules.

The San Francisco Superior Court also proposed that rule 981.1 be amended to explicitly authorize local rules to designate the department in which particular law

and motion matters are heard. The committee did not regard such purely calendaring or case management matters to be preempted by rule 981.1. The duty and authority of the presiding judge to control such matters is already established by rule of court. (See rule 205.) Hence, the committee concluded that no additional authorization for such matters in rule 981.1 is necessary.

A second commentator supported the proposed amendment of rule 981.1 to state that the rule does not apply to "local court rules adopted under the Trial Delay Reduction Act." The committee proposed this language because it clarifies the rule and accurately states the law. However, the committee cautions against misinterpreting this language or construing it overbroadly. Proper case management is an important priority. But so also is the council's policy to establish uniform statewide pretrial procedures for civil cases. Courts should exercise case management consistently with the rules and policies favoring uniform statewide rules and practices.

A third set of comments was received from the San Diego Superior Court.[7] The main concern of the court was that many of its judges rely on a local rule (Rule 6.18) to issue not tentative rulings, but rather "telephonic rulings" that become the ruling of the court as of the day rendered. Under the rule, a dissatisfied party may request a hearing within two court days of the telephonic ruling unless the court has specified that no oral argument will be allowed. Because this procedure is not authorized by the rules of court and is inconsistent with the tentative ruling procedure contained in rule 324, it will be preempted under rule 981.1. The San Diego Superior Court has requested that an exemption be made to rule 981.1 to allow the court to continue using its telephonic ruling procedures.

The committee did not support such an exemption, even on a temporary basis. The basic policy of promoting uniform statewide procedures in civil pretrial matters embodied in rule 981.1 has been developed over a number of years. The committee considered the San Diego Superior Court's telephonic ruling system and concluded that this system is not appropriate for statewide adoption. Some committee members expressed the view that the San Diego Superior Court should be able to achieve somewhat similar procedures by using the tentative ruling procedures authorized by rule 324 of the California Rules of Court. But the committee did not think that an exemption from rule 981.1 should be created for divergent local law and motion practices such as that embodied in the San Diego court's Local Rule 6.18.

[7] The committee considered Presiding Judge Wayne L. Peterson's written comments and received a report on the remarks of Judge S. Charles Wickersham, who appeared before the uniform rules working groups on March 10, 2000, to present the position of the San Diego Superior Court.

A fourth comment was received from the Chair of the Rules Committee of the Superior Court of San Mateo County. He recommended that the proposed rule changes not become effective until the beginning of 2001. The committee disagreed. It noted that the implementation of rule 981.1 has already been postponed for a year to give courts and the public an opportunity to submit rule proposals. Courts have had sufficient time to prepare for the implementation of rule 981.1. The amended version of the rule is not significantly different from the original version or the version circulated in February–March 2000. Hence, the implementation of rule 981.1, effective July 1, 2000, should cause no unanticipated problems or disruptions for the courts.

A fifth comment was received from the Chair of the Rules and Forms Committee of the Orange County Superior Court. While the Chair of the committee supported rule 981.1, as amended, he asked whether the rule really intends, by excluding "trial and post–trial proceedings," to exempt motions for attorneys' fees and motions to tax from the preemption of local rules. The committee's response was that, because these matters are generally the responsibility of the trial judge, they would indeed be exempted.

Finally, the version of amended rule 981.1 that was circulated for comment includes a *temporary* exemption for local rules for class actions and eminent domain proceedings. The Receivership Forms Working Group established by the Civil and Small Claims Advisory Committee requested that this temporary exemption in rule 981.1(c) be extended to cover "rules and forms relating to receivership proceedings." Although the group has been developing statewide forms for use in receivership proceedings during the past several months, the forms are not yet ready to be submitted to the council for adoption. A temporary exemption would allow courts to continue using their local receivership forms and rules until statewide versions are available. The committee supports such a temporary exemption.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective July 1, 2000:

1. Amend rules 201 and 501 to provide that, at the option of the person filing papers, a fax number and an e-mail address may be included on the first page of the papers;

2. Amend rule 313 to clarify the proper manner of paginating a memorandum;

3. Amend rule 324 to clarify the effect of the rule and to allow courts to make tentative rulings available not only by telephone, but also by other methods;

4. Amend rule 325 to require that demurrers be set for hearing on a date no later than 35 days following the filing of the demurrer;

5. Amend rule 376 to require the use of mandatory forms for all motions to be relieved as counsel;

6. Amend rule 379 to require that the party making an ex parte application include in a declaration that the opposing party has been notified of the relief sought;

7. Adopt new rule 388 that would list the documents that must be filed in order to obtain a default judgment on declarations;

8. Amend rule 391 to clarify the purpose and procedures for the preparation of orders after a hearing; and

9. Amend rule 981.1 to clarify the rule and create a temporary exemption for local rules relating to class actions, eminent domain proceedings, and receivership proceedings until January 1, 2002.

The texts of the amended rules and new rule are attached at pages 14–22.

Rules 201, 313, 324, 325, 376, 379, 391, 501, and 981.1 of the California Rules of Court are amended and new rule 388 of the California Rules of Court is adopted, effective July 1, 2000, to read:

Rule 201. Form of papers presented for filing

(a)–(e) ***

(f) [Format of first page] The first page of each paper shall be in the following form:

(1) In the space commencing one inch from the top of the page with line 1, to the left of the center of the page, the name, office address~~,~~ or, if none, ~~the~~ residence address, ~~and~~ telephone number, fax number and e-mail address (if provided), and State Bar membership number of the attorney for the party in whose behalf the paper is presented, or of the party if he or she is appearing in person; but the name, office address, ~~and~~ telephone number, and State Bar membership number of the attorney printed on the page shall be sufficient. Inclusion of a fax number or e-mail address on any document is optional, and its inclusion shall not be considered consent to service by fax or e-mail unless otherwise provided by law.

(2)–(7) ***

(g) [Footer] Except for exhibits, each paper filed with the court shall bear a footer in the bottom margin of each page, placed below the page number and divided from the rest of the document page by a printed line. The footer shall contain the title of the paper (examples: "Complaint," "XYZ Corp.'s Motion for Summary Judgment") or some clear and concise abbreviation. The title of the paper shall be in at least 10-point type.

(h)–(n) ***

Rule 313. Memorandum of points and authorities

(a)–(d) ***

(e) [Pagination of memorandum] Notwithstanding any other rule, the pagination of a memorandum of points and authorities that includes a table of contents and a table of authorities shall be governed by this

rule. In the case of such a memorandum, the caption page or pages shall not be numbered; the pages of the tables shall be numbered consecutively using lower case Roman numerals starting on the first page of the tables; and the pages of the text shall be numbered consecutively using Arabic numerals starting on the first page of the text.

~~(e)~~(f) ***

~~(f)~~(g) ***

~~(g)~~(h) ***

~~(h)~~(i) ***

~~(i)~~(j) ***

Rule 324. Tentative rulings ~~procedure~~

(a) [Tentative ruling procedures~~; notice of appearance~~] A trial court that ~~follows~~ offers a tentative ruling procedure in civil law and motion matters ~~and requires a party to give notice of intent to appear at oral argument~~ shall follow one of the following procedures:

(1) *[Notice of intent to appear required]* The court shall make its tentative ruling available by telephone and also, at the option of the court, by any other method designated by the court, ~~by 3:30~~ by no later than 3:00 p.m. the court day before the scheduled hearing. The tentative ruling may note any issues on which the court wishes the parties to provide further argument and whether the court wishes to have the parties appear. Oral argument shall be permitted only if a party notifies ~~the~~ all other ~~party~~ parties and the court ~~by telephone~~ by ~~4:30~~ 4:00 p.m. on the court day prior to the hearing of the party's intention to appear, or the court, in its discretion, directs oral argument. A party shall notify all other parties by telephone or in person. The court shall accept notice by telephone and, at its discretion, may also designate alternative methods by which a party may notify the court of the party's intention to appear. The tentative ruling shall become the ruling of the court unless notice of intent to appear is given.

(2) *[No notice of intent to appear required]* The court shall make its tentative ruling available by telephone and also, at the option of the

court, by any other method designated by the court, by a specified time prior to the hearing. The tentative ruling may note any issues on which the court wishes the parties to provide further argument at the hearing. This procedure shall not require the parties to give notice of intent to appear, and the tentative ruling shall not automatically become the ruling of the court if such notice is not given. The tentative ruling, or such other ruling as the court may render, shall not become the final ruling of the court until the hearing.

~~**(b) [Exceptions]** This rule does not apply to any case in which the court (1) issues a tentative ruling or posts a calendar note but does not require a party to give notice of intent to appear at the hearing, or (2) announces its tentative ruling at the time of oral argument.~~

(b) [No other procedures permitted] Other than following one of the tentative ruling procedures authorized in subdivision (a), courts shall not issue tentative rulings except (1) by posting a calendar note containing tentative rulings on the day of the hearing, or (2) by announcing the tentative ruling at the time of oral argument.

(c) [Notice of procedure] A court that follows one of the procedures described in subdivision (a) shall so state in its local rules. ~~and shall notify the Judicial Council. A local rule amendment or policy imposing or removing the requirement of notice of intent to appear shall take effect only on January 1 or July 1 and notice shall be sent to the Judicial Council at least 30 days in advance of the effective date of the rule or amendment. A local rule or policy imposing the requirement of subdivision (a) shall be effective only if enforced by all the judges of the court or branch.~~ The local rule ~~or policy~~ shall specify the telephone number for obtaining the tentative rulings and the time ~~at~~ by which the rulings ~~are normally~~ will be available. ~~if they are normally available before 3:30 p.m.~~ If a court or a branch of a court adopts a tentative ruling procedure, that procedure shall be used by all judges in the court or branch who issue tentative rulings. This rule does not require any judge to issue tentative rulings.

Rule 325. Demurrers

(a) ***

(b) [Notice of hearing] A party filing a demurrer shall serve and file therewith a notice of hearing which shall specify a hearing date in

accordance with the provisions of Code of Civil Procedure section 1005. Demurrers shall be set for hearing not more than 35 days following the filing of the demurrer or on the first date available to the court thereafter. For good cause shown, the court may order the hearing held on an earlier or later day on notice prescribed by the court.

(c)–(g) ***

Rule 376. Motion to be relieved as counsel

(a) **[~~Format~~ Notice]** A notice of motion and motion to be relieved as counsel under Code of Civil Procedure section 284(2) shall be directed to the client and shall be ~~worded in clear, simple and nontechnical terms.~~ made on the *Notice of Motion and Motion to Be Relieved as Counsel—Civil* form (MC-051).

(b) **[Memorandum of points and authorities]** Notwithstanding any other rule of court, no memorandum of points and authorities is required to be filed or served with a motion to be relieved as counsel.

~~(b)~~(c) [Declaration] The ~~notice~~ motion to be relieved as counsel shall be accompanied by a declaration on the *Declaration in Support of Attorney's Motion to Be Relieved as Counsel—Civil* form (MC-052). The declaration shall state ~~stating~~ in general terms and without compromising the confidentiality of the attorney-client relationship why a motion under Code of Civil Procedure section 284(2) is brought instead of filing a consent under Code of Civil Procedure section 284(1).

~~(c)~~(d) [Service] The notice of motion and motion and the declaration shall be served on the client and on all other parties who have appeared in the case. The notice may be by personal service or mail. If the notice is served on the client by mail under Code of Civil Procedure section 1013, it shall be accompanied by a declaration stating facts showing that either (1) the service address is the current residence or business address of the client or (2) the service address is the last known residence or business address of the client and the attorney has been unable to locate a more current address after making reasonable efforts to do so within 30 days prior to the filing of the motion to be relieved. "Current" means that the address was confirmed within 30 days prior to the filing of the motion to be relieved. Merely demonstrating that the notice was sent to the client's last known address and was not returned will not, by itself,

be sufficient to demonstrate that the address is current. If the service is by mail, Code of Civil Procedure section 1011(b) shall apply.

~~(d)~~**(e) [Order]** The proposed order relieving counsel shall be prepared on the *Order Granting Attorney's Motion to Be Relieved as Counsel—Civil* form (MC-053) and shall be lodged with the court and served on the client with the moving papers. The order shall specify all hearing dates scheduled in the action or proceeding, including the date of trial, if known. If no hearing date is presently scheduled, the court shall set one and specify the date in the order. After the order is signed, a copy of the signed order shall be served on the client and on all parties that have appeared in the case. The court may delay the effective date of the order relieving counsel until proof of service of a copy of the signed order on the client has been filed with the court. ~~served as specified in subdivision (c) for service of the notice. The order shall state the last known address and telephone number of the client which shall be the address and number of record for that party subject to Code of Civil Procedure section 1011(b). The order shall inform the client that failure to take appropriate action may result in serious legal consequences and the client might want to seek legal assistance.~~

~~The order shall inform a client that is a corporation or unincorporated association, or a client who is a guardian ad litem (except a guardian ad litem who is a relative of a child in a paternity action), personal representative, trustee, guardian, conservator, or other probate fiduciary, that except for the limited purpose of obtaining or opposing an injunction or temporary restraining order to prohibit harassment or a protective order under the Family Code, (1) the client may participate in the action only through an attorney, (2) the client maintains all the obligations of a party, and (3) failure to retain an attorney may lead to an order striking the client's pleadings or to entry of the client's default.~~

Rule 379. Ex parte applications and orders ~~in civil law and motion proceedings in trial courts and discovery proceedings in family law and probate proceedings~~

(a) ***

(b) [Notice] A party seeking an ex parte order shall notify all parties no later than 10:00 a.m. the court day before the ex parte appearance, absent a showing of exceptional circumstances. A declaration of notice, including the date, time, manner, and name of the party informed, the relief sought, any response, and whether opposition is expected, or a

declaration stating reasons why notice should not be required, shall accompany every request for an ex parte order.

A request for an ex parte order shall state the name, address, and telephone number of any attorney known to the applicant to be an attorney for any party or, if no such attorney is known, the name, address, and telephone number of such party if known to the applicant.

When an application for an ex parte order has been made to the court and has been refused in whole or in part, any subsequent application of the same character or for the same relief, although made upon an alleged different state of facts, shall include a full disclosure of any prior applications and the court's actions.

(c)–(g) ***

Rule 388. Default judgments

(a) **[Documents to be submitted]** A party seeking a default judgment on declarations shall use mandatory Judicial Council Form 982(a)(6) and shall include in the documents filed with the clerk the following:

(1) Except in unlawful detainer cases, a brief summary of the case identifying the parties and the nature of plaintiff's claim;

(2) Declarations or other admissible evidence in support of the judgment requested;

(3) Interest computations as necessary;

(4) A memorandum of costs and disbursements;

(5) A declaration of nonmilitary status for each defendant against whom judgment is sought;

(6) A proposed form of judgment;

(7) A dismissal of all parties against whom judgment is not sought or an application for separate judgment against specified parties under Code of Civil Procedure section 579, supported by a showing of grounds for each judgment;

(8) Exhibits as necessary; and

(9) A request for attorney fees if allowed by statute or by the agreement of the parties.

(b) [Fee schedule] A court may by local rule establish a schedule of attorney fees to be used by that court in determining the reasonable amount of attorney fees to be allowed in the case of a default judgment.

Rule 391. Preparation of order

(a) [Prevailing party to prepare] Unless the parties waive notice or the court orders otherwise, the party prevailing on any motion shall, within five days of the ruling, mail or deliver a proposed order to the other party for approval as ~~to form~~ conforming to the court's order. Within five days after the mailing or delivery, the other party shall notify the prevailing party as to whether or not the proposed order is so approved ~~as to form~~. The opposing party shall state any reasons for disapproval. Failure to notify the prevailing party within the time required ~~is~~ shall be deemed an approval ~~of the order as to form~~. Code of Civil Procedure section 1013, relating to service of papers by mail, does not apply to this rule.

(b) [Submission of proposed order to court] The prevailing party shall, upon expiration of the five-day period provided for approval, promptly transmit the proposed order to the court together with a summary of any responses of the other parties or a statement that no responses were received.

(c) [Failure of prevailing party to prepare form] If the prevailing party fails to prepare and submit a proposed order as required by (a) and (b) above, any other party may do so.

(d) [Motion unopposed] This rule shall not apply if the motion was unopposed and a proposed order was submitted with the moving papers, unless otherwise ordered by the court.

Rule 501. Form of papers presented for filing

(a)–(e) ***

(f) [Format of first page] The first page of each paper shall be in the following form:

(1) In the space commencing one inch from the top of the page with line 1, to the left of the center of the page, the name, office address~~,~~ or, if none, ~~the~~ residence address, ~~and~~ telephone number, fax number and e-mail address (if provided), and State Bar membership number of the attorney for the party in whose behalf the paper is presented, or of the party if he or she is appearing in person; but the name, office address, ~~and~~ telephone number, and State Bar membership number of the attorney printed on the page shall be sufficient. Inclusion of a fax number or e-mail address on any document is optional, and its inclusion shall not be considered consent to service by fax or e-mail unless otherwise provided by law.

(2)–(9) ***

(g) [Footer] Except for exhibits, each paper filed with the court shall bear a footer in the bottom margin of each page, placed below the page number and divided from the rest of the document page by a printed line. The footer shall contain the title of the paper (examples: "Complaint," "XYZ Corp.'s Motion for Summary Judgment") or some clear and concise abbreviation. The title of the paper shall be in at least 10-point type.

(h)–(l) ***

Rule 981.1. Preemption of local rules

(a) ***

(b) [Applicability] This rule apples to all matters identified above except: (i) trial and post-trial proceedings including but not limited to motions in limine (see rule 312 (d))~~,~~; ~~and~~ (ii) proceedings under Code of Civil Procedure sections 527.6, 527.7, and 527.8, ~~the Penal Code,~~ the Family Code, the Probate Code, ~~and~~ the Welfare and Institutions Code, and the Penal Code, and all other criminal proceedings~~,~~; and (iii) local court rules adopted under the Trial Court Delay Reduction Act.

(c) [Implementation] This rule is effective July 1, 2000. Courts shall amend their local rules effective July 1, 2000, or earlier to comply with this rule. ~~Any proposals for local rules to be considered for adoption as statewide rules effective July 1, 2000, should be submitted to the Judicial Council no later than September 1, 1999.~~ Notwithstanding any other provisions of this rule, trial courts may continue to enforce local

rules relating to class actions and eminent domain proceedings and local rules and forms relating to receivership proceedings until January 1, 2002.

Comments for
Uniform Statewide Rules in Preempted Fields

	Commentator	Position	Comment on Behalf of Group	Comments	Committee's Response
1.	Keri Griffith Court Program Manager Superior Court of Ventura County Ventura, CA	A		No specific comments.	No response necessary.
2.	Dennis Peter Maio, Member Committee on Administration of Justice San Francisco, CA	A		No specific comments.	No response necessary.
3.	P. McCarron Court Operations Manager Superior Court of California	A		No specific comments.	No response necessary.
4.	Richard Oliver Attorney San Joaquin County Bar Association	A	Y	The County Bar Association supports all the proposed rules. The proposals would eliminate the necessity to check local requirements.	No response necessary.
5.	Catherine E. Bennett Bakersfield, CA	AM (rules 201 and 501)		Rules 201(g) and 501(g): I disagree with your proposed change. The footer should not be larger than the smallest type allowed in the document (10 pt). A 12-pt. footer takes up too much space. If you want the footers to be "uniform" you should specify where they should be placed (left, right, center) and use a rule that all word processors can handle (below the page number is tough for some). Also, make the rule that the footer should be abbreviated. If the footer is not abbreviated, it can be very long, especially with a multiple document filing, i.e., "Notice of Motion and Motion….; Memorandum of Points and Authorities…; Declaration of …." Many people don't abbreviate.	The committee agreed that the proposed language of amended rule 201 should be changed to state "in at least 10 point type" instead of "in at least 12 point type." The rule already provides that the title of the paper may be abbreviated.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on Behalf of Group	Comments	Committee's Response
6.	John R. Dent Attorney Tuttle & Taylor 355 S. Grand Avenue Los Angeles, CA	AM (rule 201 and 501)		Rules 201(g) and 501(g): I strongly disagree with the proposed requirement in Rule 201(g) that the title of the paper set forth in the footer be in at least 12-point type. As the head of our litigation Department and member of our computer standardization committee, I was primarily responsible for implementing the footer requirement when Rule 201 was revised last year. For a variety of technical reasons (including accommodating the mandated horizontal line and page number), we ultimately had to limit the footer to one line of text. Although that line provides plenty of space in most instances, it becomes a problem in complex cases where a single hearing involves numerous motions, cross-motions, and supporting papers – and where the footer therefore needs enough detail to differentiate each document. Requiring the footer to be in 12-point type will only make these footers more cryptic, to the court's disadvantage. Moreover, unlike other limitations on point size (such as requiring footnotes to be in the same type size as the text), allowing the footer to be in a smaller point size does not enable an attorney to "squeeze" more substantive text onto the page and thereby evade page limits. The stated concerns are for uniformity and legibility. 10-point (or even 8-point) type, while more difficult to read as text, is perfectly legible for the limited purpose of a footer, and the concern for uniformity seems to be outweighed by the reduced utility to the court of having an adequate description of the	The committee agreed that the proposed language of amended rule 201 should be changed to state "in at least 10 point type" instead of "in at least 12 point type."

	Commentator	Position	Comment on Behalf of Group	Comments	Committee's Response
				document in the footer. I would therefore suggest that rather than specifying that the footer be in 12-point type, the rule require that it be no smaller than a minimum type size (either 8-point or 10-point).	
7.	James V. Weixel, Jr. Attorney 24 Professional Center Parkway, Suite 130 San Rafael, CA	AM (rules 201, 501, and 388)		Generally, Mr. Weixel enthusiastically supports rule 981.1 and related rule changes. He makes the following comments on particular rules: 1. Rule 201(g) and 501(g)–Form of Papers Presented for Filing I agree with the changes proposed to these sections, except I would suggest that the minimum type size for the title of the paper in the page footer should be reduced to 10 point. It has been my experience that most practitioners use smaller type, usually 10 point, to reduce the clutter of print on the page, and to distinguish the footer from the main text on the page. Thus, I believe that 10 point print should be permitted in the footer titles. 2. Rule 388(b)–Default Judgments I disagree with the proposed rule changes insofar as they would permit each court to set forth a schedule of attorney fees in default judgment cases. In many cases, the proposed rule would work an injustice. First, the rule would remove the discretion of courts to set what they believe is a fair fee in light of circumstances in each particular case, and would	The committee agreed that the proposed language of amended rule 201 should be changed to state "in at least 10 point type" instead of "in at least 12 point type." Local fee schedules are useful and authorized by statute. These schedules are for guidance and would not prevent courts from exercising their discretion as to the "reasonable" amount of fees in a particular case. Because rule 388(b) already states that the

	Commentator	Position	Comment on Behalf of Group	Comments	Committee's Response
				instead reduce the determination of the fee to a cold and inflexible formula. In some cases, it may be that obtaining and enforcing the default judgment will be difficult, or the right enforced by the action is sufficiently important to permit the recovery of higher fees, if permitted by statute or contract. The courts should retain the ability to exercise discretion in terminating those fees on an individual basis. Second, the rule would deprive clients of the opportunity to recover the fees upon which they and their counsel have agreed. If a client agrees to pay a one-third contingency fee, but the court awards a much lower amount, this would result in the client recovering much less than the amount to which he or she is entitled. It would also result in attorneys being dissuaded from accepting such matters for fear of losing a significant portion of their agreed fees. Third, and perhaps most notably, the rule would provide a disincentive for attorneys from counties where prevailing fees are higher from accepting matters in other counties where fees are customarily lower. For instance, a fair and reasonable fee for an attorney in a large firm in San Francisco or Orange County would probably be much greater than the fees charged by an attorney in solo practice in Mendocino or Imperial counties, since attorneys and firms from urban areas typically have much higher overhead, salaries, travel and living expenses. However, under the proposed rule, a San Francisco	schedules may be used to determine the "reasonable" amount of attorney fees, the committee did not think it was necessary to further state in the rule that courts would have discretion to determine the appropriate amount of fees in an individual case.

	Commentator	Position	Comment on Behalf of Group	Comments	Committee's Response
				attorney who obtains a default judgment in Imperial County would be continued to a much lower fee than would be warranted under the circumstances. In short, I urge that subdivision (b) of proposed Rule 388 not be adopted, unless it makes clear that the local courts retain the discretion of determining fees in default cases on an individual basis.	
8.	Paul Robinson Research Attorney Superior Court of Fresno County Fresno, CA	AM (rules 201, 324, 325 and 376)	Y	Rule 201: "It is recommended that this rule be amended to require an additional 'courtesy copy' to be provided of all motions papers. Under our local rules, these copies are provided to the research attorneys so that they may promptly review motions and prepare their memos to the judges without having to wait for the formal processing of the original file documents. This becomes the 'working copy' for the research staff and the judges. "Moving parties seeking further responses to discovery should be required to include a complete copy of the discovery propounded, including proof of service. This will reveal whether questions are unnecessarily duplicative, whether any declaration of necessity was included, whether a preface or instructions were used in violation of statute, etc. At times, this is the only way the research staff can determine if the motion was timely, especially if the motion is unopposed.	The committee disagreed with this comment. While some courts may benefit from a local courtesy copy rule, most courts do not find such a rule necessary. Hence, it would not be appropriate to adopt such a rule as a statewide rule. Furthermore, permitting an exception for individual courts, departments, or judicial officers would result in a lack of uniformity. Hence, the committee recommended against any exception to rule 981.1 that would allow for local courtesy copy rules. The suggested comment relating to copies of discovery documents went beyond the scope of the proposed rules circulated for comment, and was not considered by the committee. The committee agreed that the proposed

	Commentator	Position	Comment on Behalf of Group	Comments	Committee's Response
				"Because the titles to some documents can be quite lengthy, the requiring footers to appear in 12-point type appears to be unjustified."	language of amended rule 201 should be changed to state "in at least 10 point type" instead of "in at least 12 point type."
				Rule 324: "This rule should be clarified: 'Oral argument shall be permitted only if a party notified the other party and the court by 4:00 p.m. on the court day prior to the hearing' (proposed addition underlined)."	The committee agreed with this comment and added "court" before "days" in rule 324(a).
				Rule 325: "This section is viewed as unclear and, depending upon its purpose, ineffective in its present wording. For example, if this is intended to curtail excessive notice, it will not accomplish that goal. The word 'filing' has nothing to do with notice to the other side. Further, it will discourage continuances on demurrers, which are often used by parties to work out amendments without the need to use court time and resources. "One research attorney suggests the following language: 'Demurrers shall be set for hearing on a date not more than 35 days following the filing of the demurrer or on the first date available to the court thereafter.' "	The committee agreed to substitute the suggested language from the research attorney for the wording in the proposed rule.
				Rule 376: "One research attorney in particular was very enthusiastic about the changes to this rule. She recommended that it be mandatory for attorneys ….	The committee agreed that the amended rule 376 (and the new forms) will be beneficial.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on Behalf of Group	Comments	Committee's Response
				Mandatory use of this form would save research time, avoid the need for research memos in such situations, and basically provide judges with all the information they need with minimal use of court resources."	
9.	Richard Best Commissioner Superior Court of San Francisco San Francisco, CA	N (rule 324)		<u>Rule 324 (Tentative ruling procedure):</u> Commissioner Best disagrees with the proposed changes to Rule 324 for the following reasons: 1. *The time limit for courts to make tentative rulings should be later rather than earlier.* This proposal decreases the time allowed for review and preparation of tentative rulings and will tend to decrease the number of tentative rulings; increase court appearances, hearings and litigation costs; and decrease the value of the tentative ruling procedures. Under the current rule, courts may make tentatives available at earlier times if they so desire but an outer limit is established on a statewide basis. Alternatively, the rule should allow each local court to set its own outer time limits in order to realize the full value of the process. The change may have been made to accommodate the requirement of notice to the court. Requiring notice to the court seems to create work for clerks and lawyers and potential bottlenecks in the process without providing significant benefit to the court since the motion has been reviewed and the judge will have other hearings requiring presence in court.	The committee disagreed with this comment. The proposed amendment would change rule 324 to require court to make tentatives available at 3:00 rather than 3:30 and require attorneys to provide notice by 4:00 rather than 4:30. Those times make sense in light of the amendment of C.C.P. § 1005. These slightly earlier times are not too burdensome for most courts and would benefit litigants. By comparison, the commentator's proposals would result in notice being given to the courts too late for many courts and after business hours for attorneys. The committee concluded that this was not desirable. The committee disagreed in part and agreed

	Commentator	Position	Comment on Behalf of Group	Comments	Committee's Response
				2. *Alternative methods of communication by counsel should be recognized and permitted.* Unlike other rules (e.g., CRC, rule 379 (notice of ex parte motion)), this rule requires one form of communication exclusively. Arguably, it rejects other more reliable forms of communication. E-mail is the most common form of business communication today. Both e-mail and fax provide written records of the communication unlike the exclusive designated method. Fax provides hard copy unlike the exclusive designated method. The rule does not allow oral notice when counsel are in the same room and requires that a telephone call be made to a place where opposing counsel is not present at the time. It does not allow for written notices. There is no compelling reason to require telephonic communication or to believe it will be more effective in every case or even any case, especially when opposing counsel is not available at the other end. 3. *Simply permitting alternative means for courts to publicize tentative rulings adds nothing to the procedure since courts can and do utilize such alternatives at this time.* Currently, many courts post tentative rulings on web sites or on bulletin boards in the courthouse. Other courts provide tentative rulings by fax or e-mail. The CRC Rule should allow courts or departments to designate alternatives as the official or exclusive means of advising counsel of the tentative ruling. This rule seems to require local courts to "designate" any	in part with this comment. As for the party's notice to other parties of intent to appear, the committee remained convinced that telephonic notice is more reliable and widely available than fax or e-mail. Thus, the rule generally provides for notice by telephone. However, to clarify that direct, personal communication is also an acceptable method of notice, the committee added "or in person" at the end of the fourth sentence in (a). The committee disagreed with this comment. The proposed amendment to rule 324 is intended to provide greater flexibility. It would allow courts, at their option, to provide notice of tentative rulings by alternative methods in addition to telephonically. It is also appropriate to require courts to notify the public of their procedures by local rule.

	Commentator	Position	Comment on Behalf of Group	Comments	Committee's Response
				supplemental method of notice in order for a judge to use it. Does this required designation require a local rule? 4. *The effect of the uncontested tentative should be clarified.* The rule should clarify that the tentative will become the ruling of the court unless notice of intent to appear is given. It should provide for exceptions only to avoid an injustice and under exceptional circumstances. Otherwise, counsel cannot rely on the tentative and must expend time and money to appear in case the court "in its discretion, directs oral argument" on the day of the hearing. Subpart E of the SF rule supplemented the CRC rule and allowed counsel to rely on the tentative. Prior to its adoption, counsel felt compelled to appear "just in case" since it was not clear what might happen in their absence.	The committee agreed with this comment. It added a new sentence at the end of (a): "The tentative ruling shall become the ruling of the court unless notice of intent to appear is given."
10.	Charlene Walker Division Manager Superior Court of Sacramento County Sacramento, CA	AM (rules 376, 388 and 391)	Y	Rule 376(e): We suggest the deletion of the sentence, "If no hearing date is presently scheduled, the court shall set one and specify the date in the order." The reason for this is that this provision assumes that the department which signs the order is the department which schedules various delay reduction hearings, and such is not the case in Sacramento County. Rule 388(a): We suggest the addition of a section (10) reading, "Where applicable, a copy of the Statement of Damages that was served on the defendant(s) as set forth in the Proof of Service	The committee disagreed with removing the requirement that the court set a hearing date because this will promote more effective case management. The order for the next hearing (e.g., for a case management conference) might be issued by another department, but the date of the hearing should still be included in the order to give notice to the client. The committee did not think this is necessary because the matter is covered by statute. (See C.C.P. § 425.11(c).)

	Commentator	Position	Comment on Behalf of Group	Comments	Committee's Response
				accompanying the Application for Entry of Default." The reasons for this is that the Statement of Damages, where required, serves to limit recoverable damages. No statute or rule currently requires it to be filed. Rule 391(d): We suggest that, instead of the current proposal, the rule read, "This rule shall not apply if the motion was unopposed and a proposed order was submitted with the moving papers, unless otherwise ordered by the court." The reason for this is that if a proposed order was submitted with the moving papers, the other side(s) had opportunity to review it in deciding whether to oppose. Where a proposed order is submitted by the prevailing party only after a ruling, the judge should have the benefit of review by the opposing party to ensure the order is consistent with the ruling.	The committee agreed and changed the wording of 391(d) to the version proposed by the commentator.
11.	Arnold H. Gold Judge Superior Court of Los Angeles County Los Angeles, CA	AM (rules 376 and 391)		Rule 376(b): This rule implies that the motion may not be on a Judicial Council form. Isn't the proposed Form MC-051 (see Item W007) to be a mandatory form? Also, in proposed revised rule 376(e) the word "proposed" should be inserted immediately after the word "The" in the first line. The first sentence should be expanded to require that each other party	The committee agreed that, because the proposed forms would be adopted as mandatory, much of the language of the rule could be eliminated as long as the amended rule references the forms. The committee has developed and recommended a revised version of rule 376 that refers to the forms. The word "proposed" has been inserted. The Code of Civil Procedure already requires service on all other parties that have appeared.

	Commentator	Position	Comment on Behalf of Group	Comments	Committee's Response
				who has appeared in the case be served. Rule 391: In the second sentence of proposed revised rule 391(a), five days after mailing is far too short a time for objections. Even five days after service seems somewhat short, notwithstanding C.C.P. 1013's extension where service is by mail.	The committee disagreed. The five-day provision has been in the rule and has apparently not caused any significant difficulties. The provision encourages the prompt submission of orders to the courts.
12.	Stacey Mason Court Services Supervisor II Superior Court of Riverside County Riverside, CA	AM (rule 379)		Rule 379: "This rule should include verbiage that requires the party seeking an ex parte to file the application with the court by 12:00 p.m. the court day before the ex parte appearance. This will allow adequate time for review by the judicial officer."	The committee disagreed with this proposal. While requiring papers to be filed before the hearing may assist the reviewing judicial officer, it would be unduly burdensome on litigants and inconsistent with the purposes of ex parte hearings.
13.	Maggie Martinez Court Services Supervisor II Superior Court of Riverside County Riverside, CA	A (rule 379)		Rule 379: "This rule should include verbiage that requires the party seeking an ex-parte to file the application with the court by 12:00 p.m. the court day before the ex-parte appearance. This will provide adequate time for review by the judicial officer."	The committee disagreed with this proposal. While requiring papers to be filed before the hearing may assist the reviewing judicial officer, it would be unduly burdensome on litigants and inconsistent with the purposes of ex parte hearings.
14.	Alfred G. Chiantelli Presiding Judge Superior Court of San Francisco County San Francisco, CA	AM (Rules 379, 391, and 981.1)		Rule 379(a): Is the applicability of this rule intended to be the same or different than as prescribed in Rule 301? If the same, why is this paragraph necessary (and why does the language differ from Rule 301) There should be no differences, but unless the provision is either deleted (or replaced with a cross-reference to Rule 301 or Rule 303) there is room for	The committee agreed that (a) [Applicability] is unnecessary and should be deleted.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on Behalf of Group	Comments	Committee's Response
				misunderstanding as to whether the ex parte procedures apply to civil discovery matters. Rule 391(b): We would suggest adding to this paragraph a sentence to the following effect: "A copy of the summary and transmittal shall be mailed or delivered to the other party." The rule should be explicit that a copy of all cover letters and enclosures must be sent to the other party. Rule 981.1(b): While we understand that the Civil and Small Claims Advisory Committee rejected this court's request for a rule concerning courtesy copies, we respectfully request the Council to reconsider this matter. We do not disagree that a statewide rule requiring courtesy copies would be inadvisable, since most California state trial courts apparently do not make use of them (although we believe that most federal courts do require them). But we renew our request for an exception to the preemption rule that would authorize a local rule requiring the delivery of courtesy copies. There are numerous reasons for which our judges prefer to use courtesy copies in many situation, and the delay in getting original documents to the file (especially when the file already is in a particular department, such as the Law and Motion Department) is only one of them. Courtesy copies can be marked and highlighted, and shared by legal research assistants and the judge, while originals	The committee did not consider it necessary to include this provision. The committee disagreed with this comment. While some courts may benefit from a local "courtesy copy" rule, most courts do not find such a rule necessary. Hence, it would not be appropriate to adopt such a rule as a statewide rule. Furthermore, permitting an exception for individual courts, departments, or judicial officers would result in a lack of uniformity. Hence, the committee recommended against any exception to rule 981.1 that would allow for local courtesy copy rules.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on Behalf of Group	Comments	Committee's Response
				obviously cannot be defaced. The absence of the copy will increase the time and effort required of the judge to review many motions. Since many attorneys will remain aware of our judges' preference for such copies, many of these attorneys probably will provide them voluntarily. This may prove unfair to attorneys who do not provide extra copies, and who will have had no reason to do so since there will be no rule requiring them. Thus, we again request authorization for a local rule requiring the delivery of courtesy copies. As to a smaller matter, we also believe it would be helpful for this rule explicitly to authorize local rules designating the department in which particular law and motion matters will be heard.	The committee did not think this addition is necessary. Purely calendaring matters are not preempted by rule 981.1.
15.	Susan Cichy Management Studies Unit Superior Court of Los Angeles County Los Angeles, CA	A (rule 388)	Y	Rule 388: "This rule should list the default request form as a form which needs to be submitted and indicate that the military declaration and cost bill on the default request form are acceptable as opposed to requiring separate documents."	The rule states that a party seeking a default judgment must use mandatory Form 982(a)(6) and is sufficiently clear.
16.	Mark Lomax Management Analyst Superior Court of Alameda County Oakland, CA	AM (rule 388)		New rule 388: In general, I think this rule is a good idea. I have a few observations, though: (1) Items (4), (5), and (9) are contained in the Judicial Council–adopted Request for Entry of Default form-a fact that should be noted in the proposed new rule. (2) The council might use this opportunity to approve a default judgment form, since there are probably at least 40 different forms in use throughout the state. (3) Item (5) should be amended to add "natural-person" before "defendant against	The committee considered rule 388 to be sufficiently clear. It is in the process of developing judgment forms.

	Commentator	Position	Comment on Behalf of Group	Comments	Committee's Response
				whom judgment is sought," making it clear that no declaration is required for corporations or other similar entities. (4) Amend paragraph (8) by adding "including a written obligation to pay money, if any, as prescribed by rules 234 and 522" after "Exhibits as necessary." (5) Is subdivision (b) really necessary? It seems to be just a restatement of C.C.P. section 585, subdivision (a) ("If, by rule of court, a schedule of attorneys' fees to be allowed has been adopted, . . ."). If it is necessary, does it belong in the law and motion rules?	
17.	Michael S. Williams Court General Counsel Superior Court of Napa Napa, California	A		Rule 391: This rule is a very good idea because lawyers have given orders to judges without the opponent's approval. 981.1 (amendment): This is a valuable addition because we were concerned that the form and format changes would affect our Delay Reduction rules.	The committee agreed. The committee agreed.
18.	Wayne L. Peterson Presiding Judge Superior Court of San Diego County San Diego, CA	N (Rule 981.1)	Y	Rule 981.1: If this rule is allowed to go into effect without any exceptions being permitted, it "will abolish San Diego's well-established law and motion procedures, with disastrous effect upon its delay reduction efforts. Surely, the drive to create uniform rules among the various courts of this state was not intended to disrupt well-established and effective procedures employed by those courts. This may be an eventual goal of the Judicial Council and the Administrative Office of the Courts. But destroying a procedure without replacing it with something of comparable value makes little sense.	The committee considered Presiding Judge Wayne L. Peterson's written comments. It also received a report on the comments of Judge S. Charles Wickersham, who appeared in person before the Uniform Rules Working Groups on March 10, 2000. The committee specifically considered the San Diego Superior Court's concerns that its law and motion procedures would be preempted by rule 981.1 when it becomes effective on July 1, 2000.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on Behalf of Group	Comments	Committee's Response
				"In essence, the law and motion procedures followed by all of the independent calendar departments in San Diego center around a process whereby on each Friday law and motion matters are heard. Attorneys, in advance of filing their motions, reserve a Friday date with the independent calendar clerk of the particular department to which the case involving the motion has been assigned. On that Friday, a ruling is placed on a telephonic recording device and on the Internet. If any party to the motion desires to orally argue the court's ruling, that party requests oral argument, which is heard on the following Friday. The system has at least two major benefits. First, it allows the judge to conduct trial proceedings on four days of each week, without being interrupted on those days to hear law and motion matters. Secondly, it allows a larger number of motions to be ruled upon than would otherwise be possible. It is difficult to overstate the importance to the San Diego independent calendar program of the San Diego law and motion scheme; and it must be reiterated that an abolition of the procedures without any similar procedures to take their place will be catastrophic to San Diego'' efforts to conform to fast track. "It is my request that the San Diego Superior Court be granted a dispensation for some of its law and motion rules, even if only a temporary one, from the sweeping mandate of Rule 981.1 and that we be allowed to explore with you the adoption of	The main concern of the San Diego Superior Court is that many of the judges in that court rely on a local rule to issue not tentative rulings, but rather "telephonic rulings" that become the rule of the court as of the day rendered. Dissatisfied parties may then request a hearing within 2 court days of the telephonic ruling, unless the court has specified that no oral argument will be allowed. Because this procedure is inconsistent with the tentative ruling procedure contained in rule 324, the San Diego Superior Court would need an exception to rule 981.1 to be able to continue using the telephonic ruling procedure. The committee did not support adopting such an exception, even on a temporary basis. The basic policy of promoting uniform statewide procedures in civil pretrial matters is embodied in rule 981.1, which will become effective on July 1, 2000. This policy has been developed over a number of years. Rule 981.1 was delayed to allow the courts an opportunity to propose the adoption of their rules as statewide rules. The committee has considered the San Diego Superior Court's telephonic ruling system (Local rule 6.18) and concluded it is not appropriate for

	Commentator	Position	Comment on Behalf of Group	Comments	Committee's Response
				additional statewide rules that would reflect the procedures we follow in San Diego. Give us at least enough time to work with you to explore this issue in more depth. We are not advocating that our law and motion procedures be forced on other courts of this state, although we do recommend them highly, but that the State Rules allow them to be followed in our county."	statewide adoption. Some members of the committee expressed the view that the San Diego Superior Court might be able to achieve somewhat similar procedures by using the tentative ruling procedures authorized by rule 324 of the California Rules of Court. The committee indicated it is open to considering further proposals from the San Diego Superior Court. However, it did not think that the implementation of rule 981.1 should be delayed any longer or that exceptions to the rule should be created for different local law and motion practices.
19.	Hon. Phrasel L. Shelton, Chair Rules Committee Superior Court of San Mateo County Redwood City, CA	A (rules 201, 313, 376, 379, and 391) AM (rule 981.1) N (rule 325)	Y	Rule 981.1: "This proposed rule requires courts to amend their local rules to conform before the rule is adopted and without knowing what if any changes will be made." The San Mateo County Superior Court "suggests that local court rule changes become effective January 21, 2001."	Courts have had a year to anticipate and prepare for the effective date of rule 981.1. Because the final version of rule 981.1 is sufficiently similar to the one circulated in February–March 2000, its immediate implementation should cause no unanticipated problems or disruptions.
20.	Virginia Davidow Director, Limited Civil Operations & Records Management Central Justice Center Santa Ana, CA	AM (rules 201, 501, 388, 391, and 981.1)		Rule 201 and 501: Form of papers presented for filing. Add: (g)[Footer] Add: shall bear a footer in the center of the bottom margin of each page, placed below the page number…. Comment: Currently, the footers come in a variety of spaces	The committee agreed.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on Behalf of Group	Comments	Committee's Response
				and sizes. Quite frequently, we receive calls from law office secretaries inquiring where to place the footer. This proposal is good. In addition, Rule 201(e) and 501(e) should reflect that the page numbering to be in the <u>center of the</u> bottom of each page. <u>Rule 388:</u> Default judgments. Add: (a)(2) Declarations or other admissible evidence in support of the <u>type of</u> judgment requested; Comment: I have concern for confusion with Section 585(d) of the Code of Civil Procedure, which allows for a Declaration in Lieu of Testimony. This "type" of declaration would still be required for certain types of judgments. Add: (a)(6) A <u>separate</u> proposed form of judgment. Comment: Quite often the filing party is confused by the Request for Entry of Default form because there is a box supplied which states the filer is requesting judgment to be entered. The filer checks the box, but fails to submit a judgment form. Overall, rule 388 is an excellent rule and should clarify procedures to the public and unify procedures amongst courts.	The committee did not regard it as necessary to require the footer to be centered. The committee considered the rule to be sufficiently clear. The committee considered the rule to be sufficiently clear.
21.	Robert E. Thomas Judge Rules and Forms Committee Superior Court of Orange	AM (rule 325 and 376)	Y	<u>Rules 201(f) and 501(f):</u> Agree <u>Rules 201(g) and 501(g):</u> Agree, with comment. The footer may be continued usefulness when e-filing	No response necessary. No response necessary.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on Behalf of Group	Comments	Committee's Response
	County Santa Ana, CA			begins and scrolling of documents on a computer screen becomes necessary. Rule 313: Agree Rule 324: Agree Rule 325: Agree, only if modified. As phrased, may increase burden on clerk and/or courtroom assistant and research attorney. If some departments are setting beyond 35 days, and counsel sets demurrer on first available date, and then plaintiff raises compliance issue, clerk or court room assistant will be the one who will have to verify upon request of research attorney or judge that a 35-day setting was or was not possible on a given date. Suggest requirement that demurring party represent in caption or notice of hearing that demurrer was set for hearing beyond 35 days because of court's calendar. Rule 376: Agree, only if modified. As for (a), the reference to a "new" attorney in "If you do not have a new attorney to represent you…" could create confusion. Corny as it may sound, a pro per litigant may think the replacement attorney has to be a newly admitted attorney. Better to use the term "replacement" or "another" attorney. Again, as for (a), as one of the consequences of failing to comply with court rules and laws, it is suggested that discovery obligations and monetary	No response necessary. No response necessary. The committee disagreed with this comment. It did not think it is necessary to include information in the caption or notice that the demurrer was set beyond 35 days because of the court's calendar. The committee did not think that the reference to "new attorney" was confusing. The committee added additional information about discovery to the

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on Behalf of Group	Comments	Committee's Response
				sanctions be added, always a waker-upper. Thus, "It will be your responsibility to comply with all court rules and applicable laws and discovery obligations. If you fail to do so…action, including monetary sanctions, may be taken against you. You may even lose your case." Finally, the last sentence of (a) focuses on keeping the court informed of current name and address. Other parties to the action need also be kept current. Thus, "If you do not keep the court and other parties to the action informed of your current address…the court and other parties to the action [or simply "they"] will not be able to send you notices…" Something else in connection with address confirmation that seems to be perpetuated by the revised rule. This has to do with the lack of requirement of address confirmation, recent or otherwise, if the notice of motion is personally served on the client rather than served by mail. Yet, the order must state the last known address, which, in the case of personal service of the motion, can be something stale. If one of the purposes of address confirmation is to state a current address of record in the order which all can rely on, why should a recent address confirmation be required if the client is served by mail but not if personally served?" As for (e), clarification is needed in the sentence "If no hearing date is presently scheduled, the court shall	declaration and order, although not to the notices. The committee agreed with this comment and added references to "other parties." The need for address information is different for service by mail than for personal service. In the case of personal service, the proof of service would indicate whether the person has been served, but in the case of service by mail, the proof of service to an address that is not current may not be meaningful. Hence, in the latter case, address confirmation is especially important. The purpose of requiring the court to set a

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on Behalf of Group	Comments	Committee's Response
				set one and specify the date in the order." Does this mean if there isn't some hearing date, the court has to invent one? Why? It was also suggested that the word "may" be used instead of "shall" in setting a future date. <u>Rule 379:</u> Agree <u>Rule 388:</u> Agree <u>Rule 391:</u> It was suggested that the word, "and" be added after the word, "approved" in Section (a), Line 6 (page 12). Also, it was suggested that inconsistencies be corrected when using the words, "other party" and "opposing party." <u>Rule 981.1:</u> Agree, with comment. (B) exempts trial and post-trial proceedings from preemption. Do they really want to exempt motions for determination of prevailing party, motions for attorney fees and motions to tax costs from the preemption of local rules?	hearing date is to ensure proper case management. The committee considered it preferable to have a rule requiring that a future date be set, if no hearing date is presently scheduled. No response necessary. No response necessary. The committee regarded the language of rule 391 to be sufficiently clear. The committee regarded rule 981.1 to be clear that trial and post-trial matters are exempted, and believed that the rule does not need further clarification on this matter.
22.	Amy Silva Director, Family Law Operations Superior Court of Orange County	AM (rule 376)		<u>Rule 376(e):</u> Line 11–Change "order" to "proposed order." Line 12: The motion may be denied, so have the proposed order lodged with Court, but not served on client. If granted, the order will be signed and served	The word "proposed" has been added. The proposed order will provide the client with additional information about the consequences of the withdrawal of counsel.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on Behalf of Group	Comments	Committee's Response
				on the client anyway. Line 22: If no hearing/trial is pending, why must the Court set one? Isn't it up to the litigants to file appropriate documents to set a court date?	The reason for the requirement that the court set a hearing date is to foster case management.
23.	Case Management Subcommittee Civil and Small Claims Advisory Committee	AM	Y	<u>Rule 324:</u> The Case Management Subcommittee recommends that the sentence in (c) that states "A local rule or policy imposing the requirements of subdivision (a) shall be effective only if enforced by all the judges of the court or branch" should be changed to: "if a court or branch of a court adopts a tentative ruling procedure, that procedure shall be used by all judges in the court or branch. This rule does not require any judge to issue tentative rulings." The current language is confusing and may mistakenly be interpreted to allow any judge a "veto" over the use of tentative rulings in a court or branch. The revised language would clarify the intention of the Judicial Council which was to establish uniformity of tentative ruling procedures in particular courts or branches, as indicated in the April 28, 1992 Report on Tentative Rulings submitted to the council.	The committee agreed with this comment. It changed the rule as suggested, and added the words "who issue tentative rulings" at the end of the first new sentence.
24.	Ben McClinton, Staff Receivership Forms Work Group Civil and Small Claims Advisory Committee	AM (rule 981.1)	Y	The Receivership Forms Work Group established by the Civil and Small Claims Advisory Committee proposes that courts be allowed to use local receivership rules and forms until January 1, 2001. Several courts (Los Angeles, San Diego, etc.) rely on local forms in receivership proceedings. The Work Group needs some additional time to finish developing statewide (mandatory) forms for use in	The committee agreed with this proposal to give the Receivership Forms Working Group sufficient time to develop new statewide receivership rules and forms. It modified the proposal to extend the time for use of local receivership forms and rules until January 1, 2002, but encouraged the Working Groups to complete its tasks

	Commentator	Position	Comment on Behalf of Group	Comments	Committee's Response
				receivership proceedings. The Receivership Work Group recommends adding at the end of rule 981.1 the words: "local rules and forms relating to receivership proceedings until January 1, 2001."	sooner, if possible.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.